

REMARKS

This Amendment is submitted in reply to the non-final Office Action dated April 6, 2009. A petition for a one-month extension of time is submitted herewith. The Director is authorized to charge the amount of \$130.00 for the cost of the one-month extension of time, and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-586 on the account statement.

Claims 1-5 and 7-27 are pending in this application. Claims 17-27 were previously withdrawn and Claims 6 and 28 were previously canceled without prejudice or disclaimer. In the Office Action, Claims 5 and 16 are rejected under 35 U.S.C. §112. Claims 1-5 and 7-16 are rejected under 35 U.S.C. §103. In response, Claims 1, 5 and 16 have been amended. The amendments do not add new matter. At least in view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 5 and 16 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. With respect to Claim 5, the Patent Office asserts that the list of thickeners does not include an “and” or “or” and thus the relationship between the elements is unclear. See, Office Action, page 3, lines 5-8. The Patent Office further asserts that the list of emulsifiers contains the unclear phrase “and or.” See, Office Action, page 3, lines 8-9. In response, Applicants have amended Claim 5 to recite that “the thickener is carob gum, guar gum, a carrageenan, an alginate, gelatin, or a carboxymethylcellulose (CMC); and the emulsifier is a monoglyceride of a fatty acid, a diglyceride of a fatty acid, a sucroester or egg yolk” as suggested by the Patent Office. See, Office Action, page 3, lines 9-13. These amendments do not add new matter. The amendments are supported in the Specification at, for example, page 3, paragraph 27; page 4, paragraph 37; page 5, paragraph 55; paragraph 56, lines 1-7. Thus, Applicants respectfully submit that Claim 5 is not indefinite.

With respect to Claim 16, the Patent Office asserts that the phrase “other preparations” is indefinite because it is unclear what types of preparations are included or excluded. See, Office Action, page 3, lines 15-18. In response, Applicants have amended Claim 16 to recite a dessert “further comprising adjuvants selected from the group consisting of: inclusions and flavoring preparations.” These amendments do not add new matter. The amendments are supported in the

Specification at, for example, page 1, paragraph 2, lines 7-9; page 3, paragraph 26, lines 21-25. Applicants respectfully submit that Claim 16 clearly indicates that the types of preparations included in the claim are flavoring preparations.

Accordingly, Applicants respectfully request that the rejection of Claims 5 and 16 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 1-5, 9-13 and 15-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,084,295 to Whelan et al. ("Whelan") in view of U.S. Patent No. 3,335,013 to Wolfmeyer ("Wolfmeyer"). In response, Applicants have amended independent Claim 1. At least in view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that, even if combinable, the cited references fail to disclose each and every element of independent Claim 1 and Claims 2-5, 9-13 and 15-16 that depend therefrom.

Currently amended independent Claim 1 recites, in part, a frozen dessert composition comprising frozen water, proteins, fat, a sweetening agent mixture and at least one stabilizing agent, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture, wherein the sweetening agent mixture constitutes from 6 to 30% of the total weight of the frozen dessert composition and wherein the stabilizing agent comprises a nucleating agent for water crystals during freezing of the frozen dessert composition so that the composition, independently of any incorporation of gas, is malleable and extrudable at freezing temperatures. These amendments do not add new matter. The amendments are supported in the Specification at, for example, page 2, paragraph 19; paragraph 20, lines 1-6 and 16-21; page 3, paragraph 21, lines 18-30; paragraph 22, lines 11-17; paragraph 23; paragraph 26, lines 7-10; page 5, paragraphs 52 and 55; paragraph 56, lines 1-7. Because the frozen dessert contains a mixture of glucose polymers, the quantity of fat introduced into the composition can be advantageously be reduced without affecting the malleability of the dessert product. See, Specification, page 2, paragraph 19; page 3, paragraph 21; page 5, paragraph 52. In contrast, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

For example, even if combinable, the cited references fail to disclose or suggest a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1. The Patent Office asserts that *Whelan* discloses a sweetening agent mixture wherein at least 90% by weight of the sweetening agent mixture comprises glucose and glucose polymers. See, Office Action, page 4, lines 18-26. However, the portion of *Whelan* relied on by the Patent Office merely discloses sweeteners that may include a mixture of glucose, maltose and certain corn syrups. See, *Whelan*, column 12, lines 5-15. If, as the Patent Office asserts, the sweetening agent comprises 100% glucose and maltose (a glucose polymer comprising 2 molecules of glucose), *Whelan* fails to disclose a sweetening agent that contains a mixture of glucose polymers. Instead, such a mixture contains only glucose and a single glucose polymer, maltose, rather than a mixture of glucose polymers.

Furthermore, even if the sweetener of *Whelan* includes glucose and corn syrup, *Whelan* fails to disclose that at least 90% by weight of the sweetener comprises glucose and a mixture of glucose polymers. Nowhere does *Whelan* disclose or suggest the glucose polymers, if any, present in its corn syrup or their amounts, nor the amount of corn syrup that would be mixed with the glucose. As such, Applicants respectfully submit that *Whelan* fails to disclose a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers. In fact, *Whelan* fails to even teach that the amount of glucose polymers present in the sweetener is significant. The Patent Office also admits that *Whelan* “does not teach that the glucose polymers represent ‘from 10 to 50% of the weight [of the] sweetening agent mixture’” and instead relies on *Wolfmeyer* for the claimed element. See, Office Action, page 5, lines 5-6.

However, *Wolfmeyer* also fails to disclose a sweetening agent mixture comprising glucose and a mixture of glucose polymers. The Patent Office asserts that *Wolfmeyer* discloses a sweetening agent mixture that comprises maltose and glucose, “wherein the glucose polymers (i.e. maltose) may represent 30% or 40% of the weight of the sweetening agent mixture.” See, Office Action, page 5, lines 6-11. However, as discussed previously, maltose is only a single

glucose polymer with 2 glucose molecules. Furthermore, although *Wolfmeyer* discloses that its sweetener may contain “polysaccharides consisting of penta and higher saccharides,” *Wolfmeyer* fails to disclose whether such polysaccharides include any glucose polymers comprising n molecules of glucose. See, *Wolfmeyer*, column 3, lines 5-12. As such, *Wolfmeyer* and, thus, the cited references fail to disclose a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture in accordance with the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-5, 9-13 and 15-16 under 35 U.S.C. §103(a) to *Whelan* and *Wolfmeyer* be withdrawn.\

In the Office Action, Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Whelan* and *Wolfmeyer* and further in view of Wiley's Encyclopedia of Food Science and Technology, 2nd Edition (“*Wiley's*”). Applicants respectfully submit that, even if combinable, the cited references are deficient with respect to Claim 7.

As discussed previously, *Whelan* and *Wolfmeyer* fail to disclose or suggest a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1 from which Claim 7 depends. The Patent Office relies on *Wiley's* merely for the disclosure of a glucose syrup comprising less than 1% by weight of fructose. See, Office Action, page 7, lines 14-23. However, nowhere does *Wiley's* disclose a sweetening agent mixture comprising at least 90% by weight of glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture, nor does the Patent Office cite support for such claimed elements. Therefore, even if combinable, *Wiley's* fails to remedy the deficiencies of *Whelan* and *Wolfmeyer* with respect to Claim 7.

Accordingly, Applicants respectfully request that the rejection of Claim 7 under 35 U.S.C. §103(a) to *Whelan*, *Wolfmeyer* and *Wiley's* be withdrawn.

In the Office Action, Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Whelan* and *Wolfmeyer* and further in view of U.S. Patent No. 4,452,824 to Cole et al. (“*Cole*”). Applicants respectfully submit that, even if combinable, the cited references are deficient with respect to Claim 8.

As discussed previously, *Whelan* and *Wolfmeyer* fail to disclose or suggest a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1 from which Claim 8 depends. The Patent Office relies on *Cole* merely for the disclosure of a frozen dessert composition comprising 1 to 3% by weight of glycerol. See, Office Action, page 8, lines 7-13. However, nowhere does *Cole* disclose a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture, nor does the Patent Office cite support for such claimed elements. Thus, even if combinable, *Cole* fails to remedy the deficiencies of *Whelan* and *Wolfmeyer* with respect to Claim 8.

Accordingly, Applicants respectfully request that the rejection of Claim 8 under 35 U.S.C. §103(a) to *Whelan*, *Wolfmeyer* and *Cole* be withdrawn.

In the Office Action, Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Whelan* and *Wolfmeyer* and further in view of U.S. Patent No. 4,855,056 to Harju et al. (“*Harju*”). Applicants respectfully submit that, even if combinable, the cited references are deficient with respect to Claim 14.

As discussed previously, *Whelan* and *Wolfmeyer* fail to disclose or suggest a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose

polymers representing from 10 to 50% of the weight of the sweetening agent mixture as required, in part, by independent Claim 1 from which Claim 14 depends. The Patent Office relies on *Harju* merely for the disclosure of adding demineralized whey to a frozen dessert composition. See, Office Action, page 9, lines 24-28. However, nowhere does *Harju* disclose a sweetening agent mixture, wherein at least 90% by weight of the sweetening agent mixture comprises glucose and a mixture of glucose polymers, the glucose polymers comprising n molecules of glucose, wherein n is an integer between 2 and 10, inclusive, with the mixture of glucose polymers representing from 10 to 50% of the weight of the sweetening agent mixture, nor does the Patent Office cite support for such claimed elements. Therefore, even if combinable, *Harju* fails to remedy the deficiencies of *Whelan* and *Wolfmeyer* with respect to Claim 14.

Accordingly, Applicants respectfully request that the rejection of Claim 14 under 35 U.S.C. §103(a) to *Whelan*, *Wolfmeyer* and *Harju* be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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